

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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June 27, 2001

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GSBCA 15562-TRAV

In the Matter of PETER C. THURMAN

Peter C. Thurman, Bremerton, WA, Claimant.

Ernie R. Dadia, Deputy Disbursing Officer, Personnel Support Activity Detachment, Department of the Navy, Bremerton, WA, appearing for Department of the Navy.

**DANIELS**, Board Judge (Chairman).

The Department of the Navy sent mechanical engineer Peter C. Thurman on temporary duty travel from Bremerton, Washington, to Southern California in February and March 2001. On each occasion, the agency determined that travel by air was most advantageous to the Government, but it allowed the employee to drive his own vehicle to get to and around his duty sites in Southern California. The question posed by a claim filed by Mr. Thurman is how much the Navy should reimburse the employee for expenses he incurred on the trips.

The Federal Travel Regulation provides that when an "employee elects to use a [privately owned vehicle] instead of an alternative form of transportation [the agency] authorize[s], [the agency] must . . . [l]imit reimbursement to the constructive cost of the authorized method of transportation, which is the sum of per diem and transportation expenses the employee would reasonably have incurred when traveling by the authorized method of transportation." 41 CFR 301-70.105(a) (2000). Any additional expenses will be borne by the employee. Id. 301-10.6.

We explained in Russell E. Yates, GSBCA 15109-TRAV, 00-1 BCA ¶ 30,785, how this regulation should be applied:

This regulation requires an agency, when an employee chooses to travel in his or her own vehicle rather than by the means of transportation most advantageous to the Government, to calculate the employee's travel costs in two separate ways. First the agency should determine, through the standard application of statute and regulation, the allowability of the various

components of an employee's travel claim. . . . The agency should then total the allowable costs.

Second, the agency should determine the total constructive cost of the employee's travel had he or she traveled by the method of transportation deemed to be in the Government's best interest. . . . [C]onstructive costs are by their very nature not costs which are actually incurred. Although these costs, too, should be determined through application of statute and regulation, the calculation necessarily will involve assumptions. As with the employee's travel costs determined in standard fashion to be allowable, the agency should likewise calculate a total constructive cost.

After computing the two totals, the agency should compare them. If the total of costs determined in standard fashion to be allowable is greater than the total of the constructive costs, the agency should limit reimbursement to the latter figure.

To apply the teachings of Yates, we first summarize the parties' calculations and then examine their reasoning in detail.

A. When the case was initially presented to us, the parties held the following positions:<sup>1</sup>

<u>February trip</u>	<u>Claimed by employee</u>	<u>Paid by agency</u>
Mileage	\$1,308.24	
Gas	458.95	
Air transportation		\$ 309.50
Lodging	622.27	520.00
Meals & incidental expenses	299.23	667.00
Telephone calls	27.39	
Total	\$2,716.08	\$1,496.50

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<sup>1</sup>In presenting these tables, as well as others in this decision, we have taken the liberty of correcting arithmetic errors made by both the employee and the agency.

March trip

	<u>Claimed by employee</u>	<u>Paid by agency</u>
Mileage	\$1,093.65	
Air transportation		\$ 350.00
Lodging	693.00	275.00
Meals & incidental expenses	322.00	253.00
Total	\$2,108.65	\$ 878.00

B. After we directed the parties to the Yates explanation and calculation structure, they each revised their positions. Now they maintain that the following positions are correct:

February trip

	<u>Claimed by employee</u>	<u>"Standard fashion" calculation by agency</u>	<u>Constructive cost per agency</u>	<u>Constructive cost per employee</u>
Mileage	\$1,308.24	\$ 937.37		\$ 34.50
Gas	458.95	458.95		
Parking at Sea/Tac Airport				169.00
Shuttle to and from Sea/Tac Airport			\$ 72.00	
Air transportation			619.00	619.00
Rental car and gas			403.00	363.87
Lodging	622.27	608.47	353.00	1,089.00
Meals & incidental expenses	299.23	299.23	552.00	506.00
Telephone calls	27.39	27.39		
Laundry			60.00	
Total	\$2,716.08	\$2,331.41	\$2,059.00	\$2,781.37

March trip

	<u>Claimed by employee</u>	<u>"Standard fashion" calculation by agency</u>	<u>Constructive cost per agency</u>	<u>Constructive cost per employee</u>
Mileage	\$1,093.65	\$ 940.13		\$ 34.50
Gas	254.72			
Parking at Sea/Tac Airport				78.00
Shuttle to and from Sea/Tac Airport			\$ 36.00	
Air transportation			350.00	350.00
Rental car and gas			180.00	167.94
Lodging	385.52	376.18	275.00	594.00
Meals & incidental expenses	368.00	345.00	253.00	276.00
Telephone calls			9.34	
Total	\$2,101.89	\$1,661.31	\$1,103.34	\$1,500.44

C. We analyze the employee's claim and the agency's "standard fashion" calculation to determine the expenses that Mr. Thurman actually incurred which would be reimbursable if the agency had determined that his driving his own vehicle to Southern California was most advantageous to the Government.

1. Both the employee and the agency understand correctly that the employee would be entitled to reimbursement for travel in his own vehicle at the rate per mile specified in the Federal Travel Regulation (FTR). 41 CFR 301-10.303 (2000). In February and March of 2001, that rate was 34.5 cents per mile. 66 Fed. Reg. 6481 (Jan. 22, 2001). The parties disagree as to the distance which should be multiplied by 34.5 cents per mile to arrive at a total amount for mileage. The agency has used in its calculations the numbers of miles Mr. Thurman says he drove to and from his destinations in Southern California. The employee has used a number 1075 miles greater for the February trip and a number 445 miles greater for the March trip. Evidently, the differences correspond to the numbers of miles Mr. Thurman drove while in Southern California.

In making its "constructive cost" calculations, the agency has stated that if the employee had rented a car in Southern California and driven around the area while on temporary duty there, he would have spent seventy-eight dollars (six dollars a day) on gasoline in February and thirty dollars (five dollars a day) on gasoline in March. See Part D.3 of this decision. If gas cost about \$1.75 per gallon, he would have bought about forty-five gallons for the estimated amount in February and seventeen gallons for the estimated amount in March. If the rental car had traveled about twenty-five miles per gallon, it would have gone the distances Mr. Thurman claims. These calculations demonstrate that the agency effectively agrees that the employee's distance figures are more or less reasonable. We accept them as the best evidence available, and consequently accept also the mileage calculations made by the employee.

2. The mileage rate for use of a privately owned vehicle is designed to reflect all costs of operating a vehicle, including consumption of gasoline and oil. Glenn S. Podonsky, GSBCA 14207-TRAV, 97-2 BCA ¶ 29,229; see 5 U.S.C. § 5704(a) (1994). Consequently, no additional reimbursement may be made for the cost of gasoline purchased by Mr. Thurman while he was on his business trips.

3. The Navy authorized reimbursement of the costs of Mr. Thurman's lodgings, meals, and incidental expenses under the "lodgings-plus per diem method." See 41 CFR 301-11.5(a). Under this method, the agency pays for the employee's "actual lodging cost not to exceed the maximum lodging rate for the [temporary duty] location or stopover point." Id. 301-11.100. During Mr. Thurman's two trips to California, he never incurred a lodging cost which exceeded the maximum lodging rate for any location at which he stayed. Thus, his reimbursement is limited to the documented costs he incurred. See id. 301-11.25 (receipts required for lodging costs). The agency has essentially calculated these costs correctly. For the February trip, the total was \$608.97 (fifty cents more than the agency found). For the March trip, it was \$376.18, the exact number used by the agency.

4. Also under the "lodgings-plus per diem method," the agency pays an employee a prescribed amount per day ("per diem," in Latin), which is designed to cover the employee's costs of meals and incidental expenses. As with lodging, the amount is keyed to the employee's temporary duty location or stopover point. 41 CFR 301-11.102. The employee is entitled to only seventy-five percent of the prescribed amount for his day of departure for and day of return from travel. Id. 301-11.101. There is no authority for reimbursing an employee, under the lodgings-plus method, for his actual costs of meals and incidental expenses, as both Mr. Thurman and the Navy have assumed for the February trip (but curiously, not for the March trip).

During the periods in question, the prescribed per diem rates were \$46 for each of the locations in Southern California to which Mr. Thurman was sent on temporary duty. A rate had not been expressly set for any of the small towns in Northern California and Southern Oregon where Mr. Thurman stopped for the night on his way to and from Southern California. Therefore, the rate for each of those towns was the standard continental United States rate of \$30 per night. 41 CFR 301-11.6; 65 Fed. Reg. 53,472 (Sept. 1, 2000).

With this information, we can calculate the amounts the Navy would have paid Mr. Thurman to cover his meals and incidental expenses, on a per diem basis, if his driving his own vehicle on the two trips had been most advantageous to the Government. First, for the February trip: For the 9th and 25th, the first and last days of the trip, the rate was three-quarters of the standard \$30 rate (\$22.50); the base amount is keyed to the small towns where the employee stayed overnight while en route. For the 24th, the rate was the standard \$30 rate, keyed to the small town stopover point. For every day between those noted, the rate was \$46, the prescribed amount for San Diego and Los Angeles, where Mr. Thurman performed temporary duty. The total is \$719. For the March trip we follow the same reasoning as for the February trip: For the 11th and 18th, the first and last days of the trip, the rate was \$22.50. For the 17th, it was \$30. For every between those noted, the rate was \$46. The total is \$305.

5. Official telephone calls may be reimbursed as a miscellaneous travel expense. 41 CFR 301-12.1 (table). The agency appears to have accepted Mr. Thurman's claim that the telephone calls for which he has documented that he spent money (\$27.39 in February and \$9.34 in March) were all for official purposes. (The agency acceptance of the March figure appears in the constructive cost calculation.) These costs are therefore reimbursable.

The amounts that the agency would have reimbursed Mr. Thurman for official expenses of his temporary duty assignments, had travel by his privately owned vehicle been most advantageous to the Government, are as follows:

	<u>February trip</u>	<u>March trip</u>
Mileage	\$1,308.24	\$1,093.65
Gas	0.00	0.00
Lodging	608.97	376.18
Meals & incidental expenses	719.00	305.00
Telephone calls	27.39	9.34
Total	\$2,663.60	\$1,784.17

D. We now proceed to the analysis of how much the agency would have spent on Mr. Thurman's business trips if the employee had traveled by air, the means determined by the agency to have been most advantageous to the Government.

1. Mr. Thurman would have had to get from his home to the Seattle/Tacoma Airport to begin each trip, and from that airport back to his home to end it. The Navy maintains that this ground transportation could have been accomplished most economically by "Kitsap Airporter" shuttle, at a cost of \$18 each way. Mr. Thurman contends that using the shuttle would have been inappropriate because the shuttle does not run twenty-four hours each day. He suggests instead that he could have taken a taxi at a cost of \$75 each way or driven to the airport in his own vehicle and parked the vehicle there, at a cost of \$34.50 for mileage (one hundred miles at 34.5 cents per mile) and \$13 per day for parking. In the table showing constructive cost calculations, we have set out the costs for driving to the airport and parking there because they are less than the costs of hiring a taxi.

An employee is expected to exercise the same care in incurring expenses while traveling on Government business that a prudent person would exercise when traveling on personal business. 41 CFR 301-2.3. Because using the shuttle for transportation between home and airport would have been much less expensive than any alternative means, it would clearly have been prudent. For us to accept a different means as prudent as well, the claimant must demonstrate to us that using that means would have resulted in some economic and/or logistical benefit. See also Rule 401(c) (48 CFR 6104.1(c) (2000)) (under Board's rules of procedure, burden is on claimant to establish liability of agency and claimant's right to payment). Mr. Thurman has given us no such justification. He has not shown, for example, that the shuttle would not have been operating when he would have needed it for

transportation between his home and the airport. We therefore accept the agency's position that this transportation would have been accomplished by shuttle.

2. The parties agree as to the cost of air travel from Seattle/Tacoma to Los Angeles and San Diego. The agency says that if Mr. Thurman had traveled by air, it would have had him return home for the weekend between his two weeks in Southern California in February. This determination was not necessary; when an employee might be in travel status over a weekend, the agency should determine whether it is more cost-effective to have the employee return home or remain in travel status, 41 CFR 301-11.21(a), and a determination that it was more cost-effective to have Mr. Thurman remain in Southern California might well have been justified here. Nevertheless, because the agency decided that having the employee return home was appropriate, we will apply that decision in determining the constructive cost of the employee's February trip. The agreed-upon figures are \$619 for February and \$350 for March.

3. Had Mr. Thurman traveled to Southern California by air, he would have needed a rental car for local transportation there. See 41 CFR 301-10.450. The Navy estimates the cost of a rental car as having two components, the rental charge itself and the cost of gasoline. The estimates are \$25 per day for the car, and \$6 per day in February and \$5 per day in March for the gas. Mr. Thurman has ascertained that the actual rental charge for a car was \$27.99 per day; he has included no amount for gas. We find that each position has some validity. The employee's figure for the rental charge is more credible, and the agency's thought that some cost would have been incurred for gas is correct. We therefore conclude that the total cost of the rental car would have been, for the February trip, \$441.87 (thirteen days at \$33.99 per day -- \$27.99 for the rental charge and \$6 for gas), and for the March trip, \$197.94 (six days at \$32.99 per day -- \$27.99 for the rental charge and \$5 for gas).

4. The rules for reimbursement of lodging expenses have been explained in Part C.3 above, with reference to expenses actually incurred by Mr. Thurman while driving to and from Southern California. If Mr. Thurman had traveled by air, he would have spent only eleven nights away from home in February and five nights away from home in March. There is no reason to believe that he would have stayed at places different from the ones at which he actually stayed in Southern California. Thus, the costs he would have incurred on those nights would have been precisely the same as the costs he actually incurred. Those costs were \$358.50 in February and \$275 in March. (As with actual lodging costs, the Navy has nearly calculated these items correctly.) Mr. Thurman has presented no justification for concluding, as he has done, that he would have incurred lodging costs of \$99 per night -- the maximum for San Diego and Los Angeles -- if he had flown rather than driven to Southern California. Nor has he presented any justification for concluding, as he has done, that he would have spent the night of March 17 in Southern California and flown home on the 18th, rather than returning on the 17th as assumed by the Navy.

5. The rules for payment of a per diem allowance to cover the costs of meals and incidental expenses have also been explained with reference to Mr. Thurman's having driven to his temporary duty sites. See Part C.4. The agency's constructive cost calculations for per diem payments are correct. If Mr. Thurman had flown to Southern California, he would have received \$46 for each complete day of temporary duty and three-quarters of that amount (\$34.50) for each day on which he either began or concluded a trip.

6. There is no reason to believe that the telephone calls which Mr. Thurman actually made, and which have been accepted by the Navy as having been for business purposes (see Part C.5), would not have been made if he had flown rather than driven to Southern California. All the calls should therefore be included in the constructive cost calculation.

7. The Navy has added a cost for laundry (\$5 per day -- \$60 in all) to its calculation of the costs Mr. Thurman would have incurred if he had traveled by air in February. Laundry expenses are reimbursable as a miscellaneous travel expense, providing an employee spends at least four consecutive nights away from home on official business. 41 CFR 301-11.31. Mr. Thurman has never claimed any laundry expense for either of his trips, however, so there is no reason why the agency would pay this item. Laundry expenses should be excluded from the constructive cost calculation.

The amounts that the agency would have reimbursed Mr. Thurman for official expenses of his temporary duty assignments, had he traveled by air, as would have been most advantageous to the Government, are as follows:

	<u>February trip</u>	<u>March trip</u>
Mileage	\$ 0.00	\$ 0.00
Gas	0.00	0.00
Parking at Sea/Tac Airport	0.00	0.00
Shuttle to and from Sea/Tac Airport	72.00	36.00
Air transportation	619.00	350.00
Rental car and gas	441.87	197.94
Lodging	358.50	275.00
Meals & incidental expenses	552.00	253.00
Telephone calls	27.39	9.34
Laundry	0.00	0.00
Total	\$2,070.76	\$1,121.28

E. The final step in the analysis required by Yates is a comparison of the costs which would have been reimbursed if driving had been most advantageous to the Government with the costs which would have been reimbursed if Mr. Thurman had flown to his temporary duty locations. For each trip, the employee should have received the lesser of the two amounts.

For the February trip, actual reimbursable costs were \$2,663.60 and the limitation on recovery -- the total determined under the constructive cost calculation -- was \$2,070.76. Mr. Thurman is entitled to be reimbursed in the amount of \$2,070.76. For the March trip, actual reimbursable costs were \$1,784.17 and the limitation on recovery is \$1,121.28. Mr. Thurman is entitled to be reimbursed in the amount of \$1,121.28.



As noted in part A of this decision, the Navy has paid Mr. Thurman only \$1,496.50 for his February trip and \$878 for his March trip. These payments are too low by \$574.26 and \$243.28, respectively. To square matters, the Navy must pay Mr. Thurman an additional \$817.54 on his claim.

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STEPHEN M. DANIELS  
Board Judge